

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Karina Herrera	Team: Squad #7	CCRB Case #: 202004679	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 11:30 PM	Location of Incident: In front of Lenox Health Greenwich Village Hospital (30 Seventh Avenue)	Precinct: 06	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/17/2020 9:30 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Mon, 06/29/2020 11:28 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Curtis Valley	21488	927622	SRG 1

Officer(s)	Allegation	Investigator Recommendation
A.POM Curtis Valley	Discourtesy: Police Officer Curtis Valley spoke discourteously to individuals.	
B.POM Curtis Valley	Abuse: Police Officer Curtis Valley drew his gun.	
C.POM Curtis Valley	Force: Police Officer Curtis Valley pointed his gun at § 87(2)(b)	
D.POM Curtis Valley	Discourtesy: Police Officer Curtis Valley spoke discourteously to § 87(2)(b)	
E.POM Curtis Valley	Abuse: Police Officer Curtis Valley threatened § 87(2)(b) with the use of force.	
F.POM Curtis Valley	Discourtesy: Police Officer Curtis Valley spoke discourteously to individuals.	
G.POM Curtis Valley	Discourtesy: Police Officer Curtis Valley spoke discourteously to an individual.	

Case Summary

On June 17, 2020, § 87(2)(b) filed the following complaint with the Attorney General's Office, which was then sent to the IAB Command Center. IAB referred the complaint to the CCRB via log number #2020-15475 and it was received on June 29, 2020.

At approximately 11:30 p.m. on May 30, 2020, Police Officer Curtis Valley from Strategic Response Group 1 (SRG 1), parked his police vehicle in front of the Lenox Health Greenwich Village Hospital located at 30 Seventh Avenue in Manhattan when a group of protestors vandalized it. Police Officer Valley approached the police vehicle after it was vandalized and he told the people that were present, "Get away from the fucking car," and then he drew his firearm (**Allegation A: Discourtesy – Word, § 87(2)(g)** (**Allegation B: Abuse of Authority – Gun Drawn, § 87(2)(g)** Police Officer Valley pointed his firearm at § 87(2)(b) and said, "You want to fucking die? Get away from the fucking car." After additional words were exchanged, Police Officer Valley also said "Come get some! Come on the other side of the street - come on. I'll drop you where you fucking stand." (**Allegation C: Force – Gun Pointed, § 87(2)(g)** (**Allegation D: Discourtesy – Word, § 87(2)(g)** (**Allegation E: Abuse of Authority – Threat of Force, § 87(2)(g)** While a group of individuals were walking past the incident location, Police Officer Valley told them, "Get the fuck back" (**Allegation F: Discourtesy – Word, § 87(2)(g)** One of those pedestrians - an unidentified female - told Police Officer Valley, "Y'all are trained to do better than that," and Police Officer Valley replied, "Get the fuck back" (**Allegation G: Discourtesy – Word, § 87(2)(g)** No one was arrested or issued a summons during the incident.

The NYPD Legal Department provided one video in regards to this incident that was recorded on Police Officer Valley's Body-Worn Camera (BWC) (Board Review 01). § 87(2)(b) also provided one cellphone video that he recorded of the incident (Board Review 02).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Curtis Valley spoke discourteously to individuals.

Based on the statements that were gathered – from the complainant, the subject officer, and the witnesses - and the video evidence that was obtained, it is undisputed that Police Officer Valley spoke discourteously to several individuals at the beginning of this incident (Board Review 01) (Board Review 02) (Board Review 03) (Board Review 04) (Board Review 05) (Board Review 06).

§ 87(2)(b) identified himself as a photojournalist and he stated that on the incident date he was documenting the protests that were happening that night (Board Review 03). § 87(2)(b) was with two other photojournalists, § 87(2)(b) and § 87(2)(b) and they were following a group of protestors that were moving northbound on Seventh Avenue. The photojournalists were approximately two blocks behind the protestors, who had passed by the front of the hospital first. By the time the photojournalists got to the hospital, the protestors had already left and there was a marked police vehicle parked there that had been vandalized; its windows were broken and it was spray painted. In that moment, one of the protestors briefly returned and they threw an object that was on fire into the police vehicle, but it did not cause the entire vehicle to ignite. All of the protestors immediately left the incident location and they proceeded northbound on Seventh Avenue; the photojournalists remained at the location as they recorded the damage that was done to the police vehicle. There were other spectators present as well, including pedestrians, but none of them were affiliated with the protestors who had damaged the police vehicle. Everyone remained approximately fifty feet away from the vehicle and there was no violence at the time. After approximately ten to fifteen seconds, Police Officer Valley exited the hospital and he told everyone, "Get the fuck back – get the fuck away from my car."

Police Officer Valley explained that he was at the hospital at the time of the incident because he had transported an officer there for medical treatment and he parked his police vehicle in front of it (Board Review 06). While he was inside, Police Officer Valley heard commotion coming from outside of the hospital, so he went to the lobby to see what was happening. Police Officer Valley saw approximately thirty to forty protestors outside of the hospital, and approximately ten to fifteen of them were vandalizing his police vehicle by spray painting it and using bats to break the windows. After approximately thirty seconds to a minute, the protestors stopped hitting the police vehicle with bats, but one of them threw a lit Molotov cocktail through the rear window. Police Officer Valley did not know who threw the cocktail because they immediately ran away and he did not know in which direction they went.

The backseat of the police vehicle caught on fire from the cocktail, so Police Officer Valley exited the hospital and he began walking towards it. Police Officer Valley explained that since his unit, SRG, is responsible for assisting the Emergency Services Unit (ESU), and they are present during protests and active shooter situations, all of their police vehicles are equipped with rifle rounds, M4 rounds, and eight magazines of thirty rounds. Police Officer Valley was concerned that the fire would cause an explosion, so he loudly told everyone, "Get the fuck back," approximately two or three times, and he directed it towards the general public. Police Officer Valley used profanity while speaking to the civilians so they would know that he was being serious; the people that were present at the time were approximately thirty to fifty feet away from the police vehicle. The fire went out on its own and the entire vehicle did not ignite.

None of the video footage that was gathered showed any of the vandalism that occurred prior to the fire, but Police Officer Valley's BWC footage did capture the moment that the fire was thrown inside of the police vehicle - at one minute and forty-seven seconds - and at two minutes, the fire is still on (Board Review 01). At two minutes and eight seconds, Police Officer Valley begins walking towards the police vehicle, which has spray paint on it and the windows are damaged; it is not clear if the fire is on at this time. No one appears to be around the police vehicle in that moment, but there are multiple people standing on the corner of the hospital; the quality of the video does not clearly show how many of them are present, but their distance from the vehicle was approximately the same as both § 87(2)(b) and Police Officer Valley had estimated. At two minutes and thirteen seconds, Police Officer Valley is next to the police vehicle when he repeatedly says, "Get away from the fucking car," to the group of people on the corner. The investigation determined that § 87(2)(b) and § 87(2)(b) were not standing on that corner at this time, so those individuals were unidentified.

According to Disciplinary Case Law, when an officer uses an impolite word during a stressful encounter where that officer is attempting to gain control of the situation, the officer's profanity is not considered to be misconduct (DAO-DCT Case #201818951) (Board Review 07).

A fire was undisputedly thrown into Police Officer Valley's vehicle during the incident, and the video shows Police Officer Valley approaching the vehicle right after the fire appears to still be on.

§ 87(2)(g)

[REDACTED]

Allegation (B) Abuse of Authority: Police Officer Curtis Valley drew his gun.**Allegation (C) Force: Police Officer Curtis Valley pointed his gun at § 87(2)(b)**

While Police Officer Valley's BWC footage shows him repeatedly telling the people on the corner of the hospital, "Get away from the fucking car," there is a noise at two minutes and eighteen seconds that sounds like the grabbing of a metallic object, but Police Officer Valley's hands are not visible at this time (Board Review 01). § 87(2)(b)'s cellphone video shows Police Officer Valley exiting the hospital at two seconds, and he walks towards the police vehicle with his right hand on his holster (Board Review 02). At four seconds, Police Officer Valley moves behind the police vehicle, so he is not visible at this time, but the audio captures a voice saying, "Get away from the fucking car." This is at the same time that the metallic sound is heard through Police Officer Valley's BWC. At eleven seconds, Police Officer Valley reappears on the other side of the police vehicle, and he has his firearm drawn already and pointed towards the ground; therefore, it was determined that Police Officer Valley drew his firearm while he was obscured by the police vehicle. As previously mentioned, both videos show that no one was near the police vehicle at the time Police Officer Valley exited the hospital and the vandalism had already ceased.

Police Officer Valley's BWC video also shows him standing at the rear of the police vehicle at two minutes and twenty seconds, and he turns to face the corner that is across the street from the hospital; multiple people are standing there, including § 87(2)(b) and § 87(2)(b). At two minutes and twenty-one seconds, Police Officer Valley's firearm appears and he elevates his arm towards that corner. Police Officer Valley continues saying, "Get away from the fucking car." § 87(2)(b) and § 87(2)(b) all agreed that Police Officer Valley specifically pointed his firearm at § 87(2)(b) during the incident (Board Review 03) (Board Review 04) (Board Review 05), and § 87(2)(b) believed it was because he was standing the closest to the police vehicle at the time. § 87(2)(b) mentioned that Police Officer Valley pointed his firearm in § 87(2)(b)'s direction, but more towards the ground, while § 87(2)(b) said that after Police Officer Valley pointed his firearm at § 87(2)(b) he lowered it to a forty-five-degree angle towards the ground for approximately five to six seconds, and then he holstered it. § 87(2)(b)'s cellphone video shows Police Officer Valley pointing his firearm at § 87(2)(b) beginning at twelve seconds, and his arm appears to be elevated more than forty-five degrees.

Police Officer Valley stated that he did not point his firearm at anyone during the incident (Board Review 06). When the video evidence was presented to him, Police Officer Valley reiterated that he did not point his firearm at anyone; he was holding it at a forty-five-degree angle towards the ground. Police Officer Valley believed the video showed an inaccurate depiction of him pointing his firearm because of the positioning of his BWC, which was between his chest and his stomach at the time of the incident. Police Officer Valley used his firearm because he wanted the civilians to move back, and he feared for his life and everyone else's lives since he believed the police vehicle was going to explode.

Patrol Guide Procedure 221-01 explains that drawing a firearm prematurely and unnecessarily limits an officer's options in controlling a situation and may result in an unwarranted or accidental discharge; therefore, the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 08).

Patrol Guide Procedure 221-03 defines the highest level of force – level three – as deadly physical force and it is any force that is capable of causing death or serious physical injury, such as a

gunshot wound (Board Review 09). Patrol Guide Procedure 221-01 further states that an officer may use deadly physical force against a person to protect the officer and/or the public from imminent serious physical injury or death (Board Review 08).

§ 87(2)(b), § 87(2)(g)

Allegation (D) Discourtesy: Police Officer Curtis Valley spoke discourteously to § 87(2)(b).

Allegation (E) Abuse of Authority: Police Officer Curtis Valley threatened § 87(2)(b) with the use of force.

Allegation (F) Discourtesy: Police Officer Curtis Valley spoke discourteously to individuals.

Allegation (G) Discourtesy: Police Officer Curtis Valley spoke discourteously to an individual.

After he points his firearm, Police Officer Valley's BWC video shows § 87(2)(b) walking from the corner that is across the street from the hospital to the corner of the street that is on the same side as the hospital (Board Review 01). § 87(2)(b) tells Police Officer Valley, "Woah, put your gun away. Why do you have your gun out?" At two minutes and twenty-six seconds, Police Officer Valley continues pointing his firearm at § 87(2)(b) as he is moving and he tells him, "You want to fucking die? Get away from the fucking car." At two minutes and twenty-seven seconds, § 87(2)(b) reaches the corner and he says, "I am - why do you have your gun out?" Police Officer Valley says, "Get back." § 87(2)(b) responds, "I am back." Police Officer Valley says, "Get back on the other side of the street - let's go." § 87(2)(b)'s cellphone video recorded the same scene starting at fourteen seconds, and it shows Police Officer Valley holstering his firearm at twenty seconds (Board Review 02).

Police Officer Valley's BWC footage at two minutes and fifty seconds shows § 87(2)(b) still standing on the corner of the hospital as he is filming Police Officer Valley. Police Officer Valley says in § 87(2)(b)'s direction, "Yeah, take pictures - I don't give a fuck. Get back on the other side of the street," and § 87(2)(b) says, "I'm going to come back." § 87(2)(b) walks away, and at two minutes and fifty-seven seconds, Police Officer Valley says in § 87(2)(b)'s direction, "Come get some! Come on the other side of the street - come on. I'll drop you where you fucking stand. Get across the street right now. I'm not fucking around here." § 87(2)(b) continues walking towards the corner that is across the street from the hospital.

The BWC video at three minutes and seven seconds shows multiple people walking by the incident location, and Police Officer Valley says, "Get the fuck back," in their direction. At three minutes and ten seconds, as Police Officer Valley is inspecting the police vehicle, the audio of the BWC

captures a voice saying, "Y'all are trained to do better than that," but the person is not visible. Police Officer Valley turns around and repeats, "Get the fuck back." § 87(2)(b) had alleged that Police Officer Valley was speaking to a black female who was wearing scrubs; she immediately left the incident location, so she was unidentified (Board Review 03). § 87(2)(b)'s cellphone footage shows the female at one minute and five seconds, and it recorded the statement that she had made; she was walking with the same group of people that had past the police vehicle.

Police Officer Valley stated that he did not speak to any specific person during the incident and he did not recall if he threatened anyone (Board Review 06). Police Officer Valley did not remember § 87(2)(b) and he did not recognize his name. When the video evidence was presented to him, Police Officer Valley stated that the profanity he used while § 87(2)(b) was speaking was directed towards the general public, including "do you want to fucking die," which he said because he thought the police vehicle was going to explode; Police Officer Valley did not mean that he was going to shoot anyone and he did not intend to do so at the time of the incident. Police Officer Valley did not believe he and § 87(2)(b) were engaged in a mutual conversation during the videos because it appeared as though § 87(2)(b) was talking to him – not vice versa. In addition, Police Officer Valley said, "Take pictures – I don't give a fuck," "Come get some," and, "I'll drop you where you fucking stand," because he wanted the civilians to obey his instructions and leave the incident location; at the time, they were approximately twenty to thirty feet away from the police vehicle. Police Officer Valley was also speaking to everyone when he said, "Get the fuck back," towards the end of the videos; Police Officer Valley did not remember the female wearing scrubs that passed by the incident location and he did not directly speak to her at any point.

As previously mentioned, Disciplinary Case Law has established that an officer may use impolite words during stressful encounters if that officer is attempting to gain control of a situation (DAO-DCT Case #201818951) (Board Review 07).

Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of the service, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody, and as previously mentioned, deadly physical force against a person can only be used to protect officers and/or the public from an imminent serious physical injury or death (Board Review 08).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- Police Officer Valley has been a member of service for twenty years, and he has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), between October 31, 2011 and October 20, 2020, § 87(2)(b) was convicted of disorderly conduct (once), § 87(2)(b) OCA does not list any other convictions (Board Review 11).
- Per the New York City Office of the Comptroller, no notice of claim was filed in regards to this incident (Board Review 12).

Squad No.: 7

Investigator:	<u>Karina Herrera</u>	<u>Inv. Karina Herrera</u>	<u>10/23/2020</u>
	Signature	Print Title & Name	Date

Squad Leader: _____ Manager Vanessa Rosen October 28, 2020
Signature Print Title & Name Date

Reviewer: _____

Signature	Print Title & Name	Date
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